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To: Federal Security Directors and Deputy Federal Security Directors

From: Rana Khan, Assistant Administrator, Operations Management, Security Operations and Jason Nelson, Assistant Administrator, Human Capital

Subject: 400.5 –ROUTINE – Official Time for Bargaining Unit Employees

Cc: N/A

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Human Capital is pleased to announce that TSA and AFGE have reached a Memorandum of Agreement (MOA) on Official Time, which will be effective 5/18/2023. This MOA will supersede and replace TSA MD, 1100.61-7, *Official Time for Bargaining Unit Employees*. The MOA will eventually be incorporated into the Collective Bargaining Agreement (CBA); however, the MOA's requirements are immediately effective.

Important highlights of the MOA's requirements are included below. Additional guidance is forthcoming from HC LR, in the meantime please contact TSALaborMgtRelations@tsa.dhs.gov with questions.

100% and 50% Official Time for AFGE Representatives

- AFGE has been granted a total of 193 official time positions.
- At least 25 of these official time positions will be designated on a 50% basis (50% of time spent on union representational duties, and 50% on TSA duties).
- AFGE has the flexibility to determine how many positions will use official time on a 100% basis or a 50% basis and may make changes to the block time allocation (from 50% to 100% or 100% to 50%) as needed. Upon notification of block time allocation changes, TSA will have ninety (90) days to implement the change.
- Work schedules for AFGE Representative using 50% official time will be coordinated with local management.
- HC Labor Relations will maintain an official list of all designated AFGE Representatives and their designation of official time – 100%, 50%, or ad hoc.
- AFGE will provide the Agency with a roster of its Council 100 officers within 30 calendar days of the effective date of this agreement and annually thereafter.
- Work space and equipment for these additional representatives is covered by the CBA, Article 11.C.34, and must be provided within 60 days of the effective date of the MOA (no later than July 17, 2023).
- Local discretion may be used for identification and location of required work space (on-site work space or off-site work space).



- Time for travel MAY be authorized for official time; however, the Agency will not incur any costs associated with providing lodging, per diem, flight or GOV usage.

Official Time Bank

- AFGE has been granted an official time bank of 75,000 hours.
- Official time from the bank will be used on an ad hoc basis by union representatives not designated as 100% or 50% representatives.
- Union representatives must continue to submit TSA Form 1160-6, *Union Representative Official Time Request*, generally in advance, to request official time.
- Management officials must promptly review requests for official time and approve or deny them as soon as possible.
- If an official time request is denied, the designated Management official must provide a written explanation for the denial.
- If an official time request is denied because of operational needs, the Management official will work with the requestor to identify an alternate time to mitigate impacts to operations.

Additional guidance on official time, including tracking ad hoc hours used from the official time bank, will be forthcoming.

If you have any questions, please contact HC Labor Relations: TSALaborMgtRelations@tsa.dhs.gov

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MEMORANDUM OF AGREEMENT

Union Representatives and Official Time

A. GENERAL PROVISIONS

1. Upon request and approval, as detailed below, a reasonable period of official time will be granted to bargaining unit employees elected or designated to serve as union representatives to perform representational duties consistent with 5 U.S.C. Chapter 71 and the collective bargaining agreement (to include this MOA). Local Presidents and their designees will be released to perform appropriate labor relations duties, as described below.
2. Union representatives will not suffer any loss of pay for use of official time in accordance with Chapter 71, other applicable government rules and regulations, and/or the collective bargaining agreement (to include this MOA).
3. Union representatives on 100% official time will not perform any screening duties or any technical proficiency assessments and their TSO certification may lapse.
 - a. The Union may not designate a bargaining unit employee for official time until the bargaining unit employee has completed initial certification requirements.
 - b. Because they will be performing union activities on a full-time basis and not be performing any TSA duties, these bargaining unit employees will be presumed to have attained the same performance level they earned in the most recent rating of record which was not presumed.
 - c. Union representatives on 100% official time for the entire rating period will not be eligible for awards for screening performance; however, they are eligible for other awards.
 - d. When a union representative on 100% official time completes their full-time official time service, they will be required to complete a return-to-duty training program and pass certification testing, as determined by the Agency. The amount of time and level of return-to-duty training and certification testing will be based on TSA Policy. Failure to successfully complete the return-to-duty training and certification requirements may result in removal from TSA.
4. When a representational activity is held at a particular time and/or official time is approved for a representative, the Agency will make the necessary shift adjustments for the participants to be on duty during the scheduled or requested date and time, subject to operational needs.
5. Upon request and approval in advance, a reasonable period of leave without pay will be granted to Council and Local Officers for the purposes of carrying out Union-related duties. As with any form of leave, LWOP is requested using OPM Form 71, *Request for Leave or Approved Absence*, or a TSA approved electronic version thereof, and must be recorded in the bargaining unit employee's time and attendance records.

B. AUTHORIZED USES OF OFFICIAL TIME

1. Except where otherwise prohibited by this MOA or expressly limited by its terms, Union representatives will be authorized, and may be approved subject to operational needs, for official time for all matters relating to the administration of the collective bargaining agreement (to include this MOA) and labor-management relations matters, such as but not limited to:

- a. Investigating, preparing for, participating in, and representing employees in regard to:
 - i. discrimination complaints and appeals;
 - ii. informal employee or labor-management complaints;
 - iii. unfair labor practice charges and related hearings or any equivalent proceeding;
 - iv. grievances;
 - v. corrective, disciplinary, or adverse actions for which the bargaining unit employee has a right to representation;
 - vi. arbitration hearings;
 - vii. statutory appeals as authorized under Chapter 71;
 - viii. health and safety related matters as authorized by law, regulation, policy, and the collective bargaining agreement (to include this MOA);
 - ix. attendance at CBA committee meetings as the designated Union representative(s);
 - x. Examinations of any employee in the unit by a representative of the agency in connection with an agency investigation if the employee reasonably believes the examination may result in disciplinary action against the employee and the employee requests representation;
 - xi. labor-management meetings;
 - xii. serving as technical advisor, co-representative, or otherwise assisting during hearings, as authorized by Chapter 71;
 - xiii. negotiations;
 - xiv. presenting the views of the Union to officials of the Executive Branch, the Congress, or other appropriate authority;
 - xv. maintaining records and reports required of the Union by 5 U.S.C. § 7120(c);
 - xvi. attending conventions, conferences, and meetings of professional organizations when it is mutually determined it will be of benefit to the bargaining unit employee and TSA; and
 - xvii. formal discussions

b. Meeting, communicating, or conferring with bargaining unit employees and representatives of the union concerning representational functions.

c. Attending training if determined by both Parties to be mutually beneficial to both parties.

d. Reviewing and responding to memoranda, letters, and requests from Agency Representatives consistent with their representational duties.

e. Reviewing and disseminating manuals, and notices, which affect personnel policies, practices, or working conditions.

2. Official time requests for appropriate Union representational activities other than those listed above, but not listed in Section C below, will be reviewed at the appropriate management level. In this instance, activities that do not appear in the list above will be discussed with the submitting Union official. Management may approve official time for the activity.

3. If a request for official time is denied, the reason will be provided in writing and may be grieved.

C. PROHIBITED USES OF OFFICIAL TIME

1. Union representatives shall not use official time for the following purposes:

a. Any activities that are in violation of any applicable law, rule, or regulation, including 18 U.S.C. Section 1913 and 5 U.S.C. Chapter 73; and

b. Internal union business (e.g., solicitation of membership, election of union officials, the collection of dues, etc.) in violation of 5 U.S.C. Section 7131(b).

D. 100% AND 50% OFFICIAL TIME

1. In recognition of the nature and complexity of Agency operations consisting of rapidly evolving round-the-clock operations, TSA agrees that the Union will receive the below pre-authorized allocation of official time for Union use as follows:

a. The Union shall be granted a total of 193 official time positions, to be assigned by Council 100, subject to appropriations. Council 100 officers are included in this total. The Union may designate positions as 100% or 50%, and at least 25 of the 193 total positions will be designated as 50%. Bargaining unit employees designated for 50% official time will work with local management to schedule their official time duties and TSA duties.

2. The Union will provide the Agency with a roster of its Council 100 officers within 30 calendar days of the effective date of this agreement and annually thereafter.

3. The Union must provide written notice to TSA identifying the bargaining unit employees placed on official time under this section along with a statement listing these bargaining unit employees' duties and responsibilities on behalf of the union.

4. Council 100 will provide written notice to the Labor Relations Director or designee whenever it adjusts a bargaining unit employee's block time allocation (changes an employee's block time from 100% to

50% or 50% to 100%) or adds/removes a bargaining unit employee to/from a block time position. TSA will implement changes within ninety (90) days after receiving notice.

E. OFFICIAL TIME BANK

1. A bank of 75,000 total official time hours will be allocated for *ad hoc* use per calendar year, consistent with the requirements of this Agreement, subject to appropriations.
2. Any time spent by employees, including Union representatives, that is provided under separate authority to participate in certain statutory procedures (e.g., proceedings before the Equal Employment Opportunity Commission) will not be charged to the official time bank.
3. Official time used by bargaining unit employees for bargaining consistent with the Determination and any related third-party proceedings will not be charged to the official time bank.

F. USE OF OFFICIAL TIME BANK

1. Approval of official time from the bank is subject to the Agency's operational needs, and must be requested in accordance with the requirements in this subsection. If official time is denied for operational reasons, management will provide the reason in writing.
2. Upon request by the Council 100 President or designee, the Agency will provide the Union with a report indicating the total number of official time hours used in the past quarter from the bank of hours.
3. Official time used from the additional bank of hours for representational activities will be requested using the following procedures:
 - a. The request must be made using TSA Form 1160-6, *Union Representative Official Time*, or any other form if mutually agreed to by the parties, which must be completed in its entirety.
 - i. Requests for official time must be submitted by the union representative to the designated management official. Selection of the designated management official is made by the FSD or designee at each airport. The Agency will provide the Local Union President with an up-to-date list of designated management officials within the Local's jurisdiction.
 - ii. Union representatives seeking official time should request only the amount of time believed necessary to address the matter. The minimum amount of official time that may be requested is a 15-minute increment.
 - iii. If a standing meeting on workplace issues is established and it is a formal discussion, a bargaining unit employee who is designated as the union representative to attend the standing meeting may receive official time on a recurring basis consistent with this Agreement.
 - iv. The request must normally be submitted by the union representative requesting to use official time in advance of the requested official time. The requirement that the written notice be made in advance will not apply in cases where such advance written notice would be impractical. Examples of instances where the advance submissions of TSA Form 1160-6 or equivalent would be impractical are: shootings,

traumatic incidents, significant incidents, and events directed by the Agency (e.g., Agency-initiated meetings, phone calls, and interviews). In these circumstances, TSA Form 1160-6 or equivalent will be submitted subsequently.

- v. Time and attendance records must be annotated appropriately to record a union representative's use of official time.
 - vi. If the matter for which official time was requested and approved consumes less time than is authorized, the bargaining unit employee must report in a timely manner to the immediate supervisor for instructions, which may include returning to duty.
 - vii. Designated management officials are required to promptly review requests for official time and respond to the requesting bargaining unit employee as soon as possible.
 - viii. Upon exhaustion of the hours in the bank, no subsequent requests will be approved for bargaining unit employee union representatives not designated as 100% or 50% official time unless the representational matter is covered by the EEO regulation, 29 CFR 1614.
- b. Upon receipt of a complete TSA Form 1160-6, *Union Representative Official Time Request*, or equivalent form, the designated Management official will promptly review the request and approve or deny it as soon as possible. The designated Management official will retain one copy and return one copy to the requestor.
- c. If the union representative is not provided an answer to the request prior to the time requested, the representative may not assume it is approved.
- d. When appropriate, the Agency will work with the representative to schedule an alternate time and/or date for use of the requested official time. The alternate time and/or date will be noted on the TSA Form 1160-6, *Union Representative Official Time Request*, or equivalent form.
- e. If official time is denied, the designated Management official will provide a written explanation for the denial as soon as possible. If the request is denied because of operational needs, the Management official will work with the requestor to identify an alternate time to mitigate impacts to operations.
- f. If the request is approved, the Union representative will provide their supervisor with a written copy of TSA Form 1160-6, *Union Representative Official Time Request*, or any other form if mutually agreed to by the parties, showing approval.


G. TRAVEL FOR UNION REPRESENTATIVE

1. Once official time is authorized for a specific function that requires travel outside a Union representative's work location, the representative will be permitted to leave the facility to discharge their functions after notifying their respective supervisor of their destination, expected return date/time, and the category of representational activity involved. When travel is approved for a union representative to conduct representational activities, TSA will not incur any cost associated with bargaining employee travel for the representational activity, unless specifically authorized.

2. Where travel to another location within the jurisdiction of a Local union is necessary for representational activities consistent with the provisions of the collective bargaining agreement (to include this MOA), official time may be authorized for such travel.

H. ALLEGATIONS OF MISUSE

Each Union representative is responsible for utilizing official time only for authorized purposes, consistent with 5 U.S.C. 7131 and the collective bargaining agreement (to include this MOA). Alleged abuses of official time shall be brought on a timely basis to the attention of the Labor Relations Director or designee, who will then notify the Council President of the allegation.

 5/18/23

Amelia Glymph

Chief Negotiator, AFGE Date

 5/18/23

Daniel Wyllie

Chief Negotiator, TSA Date